IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA, 1928

WA.No. 1260 of 2006(A)

AGAINST JUDGMENT DATED 7.2.2006 IN WP(C) NO.10033/2005

APPELLANTS: PETITIONERS
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1. NATIONAL INTEGRATED MEDICAL ASSOCIATION, KASARAGOD DISTRICT BRANCH, KASARAGOD, REP. BY ITS SECRETARY, DR. SREENIDHI SARALAYA, S/O. LATE SEETHARAMA SARALAYA, AGED 34 YRS, NOW RESIDING AT SREENIDHI HOUSE, BADIYADUKKA, P.O.PERADALA, KASARAGOD DIST.

2. DR. SREENIDHI SARALAYA, SREENIDHI HOUSE, BADIYADUKKA, P.O.PERADALA, KASARAGOD DIST.

BY ADV. SRI.A.MOHAMED MUSTAQUE

RESPONDENTS: RESPONDENTS
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1. THE STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, TRIVANDRUM.

2. THE CHIEF SECRETARY, STATE OF KERALA, TRIVANDRUM.

3. THE SECRETARY, HEALTH & FAMILY WELFARE DEPARTMENT, SECRETARIAT, TRIVANDRUM.

4. THE DRUGS CONTROLLER OF KERALA, TRIVANDRUM.

5. THE DISTRICT SUPERINTENDENT OF POLICE, KASARGOD.

6. THE SECRETARY, CENTRAL COUNCIL OF INDIAN MEDICINE, INSTITUTIONAL AREA, JANAKPURI, NEW DELHI-58.

7. DR. KHADER K.A., CHAIRMAN, ANTI-QUACKERY CELL, KASARAGOD DISTRICT AND INDIAN MEDICAL ASSOCIATION, KUNJATHUR, KANJESHURE, KASARAGOD.

8. DR.P.NAGRAJ, ANJALI, MATERNITY & NURSING HOME,
MAIN ROAD, BADIADKA, PERDALA, KASARGOD.

R7 BY ADV. SRI.P.K.MUHAMMED
R1 TO R5 BY SR.GOVT. PLEAEDER MR.M.R.SABU
R6 BY ADV.MR.JAYAPRADEEP.V.
R8 BY ADV.MR.SURESHKUMAR KODOTH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.K. BALI, C.J. & C.N.RAMACHANDRAN NAIR, J.

W.A.No.1260 OF 2006

Dated, this the 12th day of December, 2006

JUDGMENT

V.K.Bali,C.J.(Oral)

The appellants were the petitioners in the original lis. They are practising the system of Indian Medicine which includes Ayurveda. Siddha and Unani. It has been their case that in the northern-most district of Malabar called Kasaragod, graduates in Indian System of Medicine are entitled to practise in Allopathic Medicine also by virtue of the provisions contained in Section 17 (2)(b) of the Indian Medicine Central Council Act, 1970, hereinafter referred to as the 'Act of 1970'. In short, even though the petitioners may be practising in the system of Indian Medicine, like Ayurveda, Siddha and Unani, they seek right to practice Allopathic Medicine also. Sections 17(2)(b) and 2(e) of the Act aforesaid dealing with the subject have already been reproduced by the learned Single Judge in the impugned

judgment. The respondents contested the cause of the petitioners on the grounds mentioned in the counter affidavit filed by them. Primarily it was urged by the respondents that modern advances mentioned in Section 2(e) of the Act of 1970 can only be advances in Ayurveda, Siddha and Unani and not Allopathic Medicine and further that, by virtue of Section 15(2)(b) of the Indian Medical Council Act, 1956 persons having the prescribed medical qualifications included in the schedules alone are eligible to practise Modern Medicine. It appears that the words 'modern advances' contained in Section 2(e) of the Act of 1970 would be referable to modern advances made in the respective fields of Ayurveda, Siddha and Unani. This is how the learned Single Judge also interpreted Section 2(e) of the Act of 1970. The learned Judge also placed reliance upon the decision of the Honourable Supreme Court in **Mukhtiar Chand** v. **State of Punjab** (AIR 1999 SC 468). The modern advances mentioned in Section 2(e) of the Act of 1970 cannot be interpreted to mean Allopathic Medicines.

We do not find any merit in the writ appeal and the same is dismissed.

V.K. BALI,
CHIEF JUSTICE.

C.N.RAMACHANDRAN NAIR,
JUDGE.

vns